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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 577/2013

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by:	N.B. (not represented by counsel)
Alleged victim:	The complainant
State party:	Russian Federation
Date of complaint:	13 May 2013 (initial submission)
Date of present decision:	25 November 2015
Subject matter:	Complainant subjected to torture in pretrial detention
Substantive issues:	Torture – prompt and impartial investigation; forced confession; reparation
Procedural issue:	Admissibility
Articles of the Convention:	Article 22 (5) (a)

GE.16-01709(E)

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 577/2013*

Submitted by:	N.B. (not represented by counsel)
Alleged victim:	The complainant
State party:	Russian Federation
Date of complaint:	13 May 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 25 November 2015,

Having concluded its consideration of complaint No. 577/2013, submitted to it by N.B. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1. The complainant is N.B., a Russian national born in 1969, who at the time of submission was serving a prison sentence in correctional facility No. 29 (IK-29) in the Kirovsky region of the Russian Federation. He complained that he was beaten and tortured by police officers while in pretrial detention and that his complaints regarding torture have not been adequately investigated. The complainant's submission is addressed to the Committee against Torture, but he refers to violations by the State party of articles 3, 6, 13 and 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). The complainant is not represented.

Facts as presented by the complainant

2.1 On 12 and 13 October 2008, the complainant was detained at the Regional Department of the Ministry of the Interior in Pyatigorsk, Stavropol Region. He was beaten by several police officers on his head and abdomen and received electric shocks, with the aim of extracting a confession. As a consequence, the complainant suffered partial hearing loss, pain in the heart area and one of his ribs was broken.

* The following members of the Committee participated in the examination of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

2.2 On 24 November 2008, the complainant submitted a complaint about the police officers' physical assaults to the Interregional Investigation Department in Pyatigorsk. On 25 November 2008, the Department ordered a forensic medical examination of the complainant, which confirmed his fractured rib and hearing impairment.

2.3 On 23 July 2010, the senior investigator of the Department dismissed the complaint and decided not to initiate a criminal investigation into the alleged torture. The complainant appealed and, on 22 October 2010, Pyatigorsk City Court declared the investigator's decision unlawful. It requested the director of the Department to remedy the situation. Owing to the lack of progress in the investigation, the complainant submitted a new petition to Pyatigorsk City Court. On 25 February 2011, the Court declared the investigator's inaction unlawful and requested the director of the Department to redress the violation of the law.

2.4 On 13 October 2011, the complainant appealed to the Prosecutor General of the Russian Federation, complaining about the lack of investigation into his complaint. The appeal was transferred to the Pyatigorsk City Prosecutor who, on 26 December 2011, concluded that the complainant's physical injuries had possibly been inflicted by police officers during his detention and requested a complementary investigation. On 2 January 2012, the Department again decided not to initiate criminal proceedings.

2.5 The complainant filed an appeal to the Supreme Court requesting the enforcement of the 22 October 2010 decision of Pyatigorsk City Court. The Supreme Court forwarded the appeal to Pyatigorsk City Court. In a letter dated 20 November 2012, Pyatigorsk City Court requested the director of the Investigation Department to act upon the complainant's request and inform him about the decision. However, the complainant received no response.

2.6 The complainant notes that the decisions of Pyatigorsk City Court of 22 October 2010 and 25 February 2011 were not implemented. He sent additional complaints to the Office of the Prosecutor General, the Chairman of the Investigative Committee and the President of the Russian Federation, but received no response from them.

2.7 The complainant was convicted by Pyatigorsk City Court on 26 August 2009 for committing crimes under articles 111.4 and 132.1 of the Criminal Code, and sentenced to 10 years' imprisonment. He filed a cassation appeal, which was rejected on 11 November 2009 by the Judicial Panel on Criminal Matters of Stavropol District Court. In his cassation appeal, the complainant alleged that he had been tortured until he agreed to write a confession. The Court considered that claim to be a strategy to avoid punishment, since the confession had been handwritten by the complainant during an interrogation in the presence of the complainant's lawyer, and neither the complainant nor the lawyer had raised any objection at the time.

The complaint

3.1 The complainant submits that he has exhausted all available and effective domestic remedies. He maintains that the national authorities have repeatedly failed to act on his repeated requests to implement the decisions of Pyatigorsk City Court of 22 October 2010 and 25 February 2011.

3.2 The complainant maintains that the beatings he endured from the police officers amounted to torture. In addition, he submits that the failure by the State party to prevent those acts constitutes a violation of his rights. The complainant also maintains that the failure of the State party to promptly, effectively and impartially investigate those acts amounts to a separate violation of his rights.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 4 April 2014, the State party submits that the communication is inadmissible because the complainant failed to exhaust the available domestic remedies. The State party maintains that all the complaints filed by the complainant before the authorities have been reviewed objectively, including by the courts.

4.2 The State party submits that the complainant was accused of committing crimes under articles 111.4 and 132.1 of the Criminal Code; a criminal case was initiated against him in accordance with the requirements of the law. The pretrial investigation established that on 1 November 2007, the complainant, while intoxicated, had a fight with K. and inflicted multiple injuries on him, which eventually led to K.'s death. After injuring and incapacitating K., the complainant also raped him. The complainant was convicted by Pyatigorsk City Court for those crimes.

4.3 The complainant's allegation that he was beaten by police officers on 12 and 13 October 2008 in order to extract a confession from him was refuted by the results of the pre-investigation verification that was conducted following his complaint. According to the conclusions of the forensic medical examinations conducted on 28 November 2008 and 31 May 2013 as part of that verification and the testimony of the expert conducting the examinations, the complainant's hearing loss was the result of an ear infection (cochleitis). Both examinations revealed a healed fracture of the eighth rib, which had resulted from a blow with a blunt instrument or from a fall. In the course of the pre-investigation verification, the medical records from 19 October 2008 of Federal Detention Centre No. 26/2, where the complainant was transferred from the temporary detention centre, were collected and examined. According to the records, the complainant was examined upon arrival, assessed as "practically healthy" and diagnosed with chronic alcoholism. On 23 October 2008, the complainant requested a medical examination, claiming that he had physical injuries. He was subjected to an examination by a commission consisting of four medical doctors the same day; the commission did not find evidence of any injuries.

4.4 The State party submits that the procedural documents contained no complaints from the complainant or his lawyer regarding allegations of violence. Prior to his conviction, the complainant made no other complaints to the investigator, the defender, the head of the investigative body, the prosecutor or the court.

4.5 In the light of the finding from the pre-investigation verification that police officers were not implicated in violence against the complainant, and the fact that the complainant had suffered a rib fracture, a criminal investigation into the allegation of intentionally inflicted moderate bodily harm was initiated by the Investigation Department of the Internal Affairs Department in Pyatigorsk.

4.6 The issues related to the exertion by police officers of moral and physical pressure on the complainant were also investigated in the course of judicial proceedings. The Court addressed the claims in its verdict, considering them to amount to a defence strategy.

4.7 Regarding the complainant's claim that the 22 October 2010 and the 25 February 2011 court decisions have not been implemented, the State party submits that that is not an accurate reflection of reality. Following the 22 October 2010 decision, on 17 February 2011, the deputy head of Pyatigorsk Interregional Investigation Department revoked the 23 July 2010 decision of the senior investigator of the Department not to initiate a criminal case, and returned the case for additional verification. An investigator of the Investigation Department of the Investigative Directorate of the Office of the Prosecutor of the Russian Federation was questioned, and testified that he and his colleagues had not exercised any moral or physical pressure on the complainant. The complainant's claim that he had been subjected to electric shocks was not confirmed by the forensic medical examination, which revealed no traces of such treatment on his body. Following the verification of the

complainant's claims, several decisions were issued refusing to initiate a criminal investigation, the latest on 7 November 2013, issued by the senior investigator of the Investigative Department of the Investigative Committee of the Russian Federation in Stavropol District. That decision was revoked by a decision of 5 December 2013 of the Stavropol District Prosecutor's office, which indicated that an additional investigation was required to identify the individuals who had been detained with the complainant at the time that he was injured, in order to question them and further clarify the circumstances surrounding the complainant's arrest. The State party submits that, at the time of its submission, that additional verification had not been completed; it was scheduled to continue until 3 March 2014. The verification was lengthy because the complainant presented new arguments that had not been verified previously.

Complainants' comments on the State party's observations and additional submission

5.1 In a submission dated 23 June 2014, the complainant challenges the State party's submission of 4 April 2014. He reiterates that he was subjected to torture when he was arrested on 11 October 2008 and taken to the Regional Department of the Ministry of the Interior in Pyatigorsk; the torture started immediately upon his arrival. A ruling ordering his arrest was not issued until 15 October 2008, his arrest therefore constituting a violation of the Constitution of the Russian Federation. He reiterates that he was convicted for a crime he did not commit and argues that the verdict against him was unlawful. He submits that he requested the court in Pyatigorsk to provide him with copies of the documents allegedly testifying to the violations of which he was accused, but his numerous requests were rejected.

5.2 In a submission dated 26 June 2014, the complainant submits that an order for a forensic medical examination of his injuries was issued on 14 June 2010, but that no such examination was conducted. Another such order was issued on 10 May 2013. He maintains that the only medical examination he underwent was conducted by a traumatologist in polyclinic No. 1 in Pyatigorsk, who concluded that the complainant had suffered serious injuries. The complainant also maintains that he was never examined by the forensic medical expert indicated in the State party's submission. He reiterates that he is still suffering as a result of the torture: he is unable to lie on his right side or on his stomach as his fractured rib did not heal correctly and now presses against his internal organs. He submits that if his hearing loss was the result of an infection, he should have been treated for the infection. He still suffers from hearing loss and he hears a permanent noise. He submits that by the time he registered his complaint regarding torture, the medical examination report issued by the traumatologist in the polyclinic had been "lost" and replaced by the medical examination report of the State-appointed expert. He maintains that for five years and seven months, his complaints regarding torture have been forwarded from one institution to another, but have not been reviewed on their merits. He submits copies of requests to the Supreme Court for supervisory review of his case and a copy of the letter dated 2 September 2010 from the Deputy Chair of the Supreme Court rejecting his request, as well as copies of requests for compensation for the fact that he has not been given copies of case materials and the 17 November 2011 Supreme Court decision refusing to grant such compensation.

State party's additional observations

6.1 In a submission dated 22 October 2014, the State party submits that Stavropol Regional Court confirmed the 26 August 2009 verdict of Pyatigorsk City Court sentencing the complainant to 10 years' imprisonment for committing a sexual assault and inflicting bodily injuries that resulted in death. Stavropol Regional Court stated that the complainant's arguments regarding the use of unlawful methods of investigation in his case were unfounded. In accordance with article 401.2.4 of the Code of Criminal Procedure of

the Russian Federation, court decisions may be appealed within one year of their entry into force. That term has expired. The complainant's complaints do not contain any information regarding the existence of new or newly discovered facts, which according to article 413 of the Code could serve as grounds to reopen the criminal proceedings in his case.

6.2 The State party also submits that, since it could not be established that police officers were responsible for the complainant's fractured rib, on 29 September 2013, a criminal case was initiated by the Pyatigorsk Department of the Ministry of Internal Affairs. At the time of submission of the State party's additional observations, the investigation was still ongoing. The State party reiterates that the communication should therefore be declared inadmissible under article 22 (5) (b) of the Convention for failure to exhaust domestic remedies. Moreover, the State party holds that the complainant is not a victim of violations of the Convention and his communication is a strategy to avoid having to serve his prison sentence.

Complainant's further submissions

7.1 In a submission dated 13 November 2014, the complainant argues that the Committee should request copies of the case files of the criminal case against him from Pyatigorsk City Court and copies of the documents related to verification No. 689/09 from the police. Those documents contain the results of the forensic medical examination, reflecting the damage to his health inflicted as a result of torture. He reiterates that his complaints submitted in the Russian Federation are not being reviewed, but are forwarded to the official about whose actions he is complaining. He requests a prison visit in order to demonstrate the damage inflicted on him through torture. He also requests the Committee to request the European Court of Human Rights to review his application, No. 33772/13, and to indicate all the violations of his rights under the Convention and domestic legislation, because the individuals who tortured him have never been punished. Indeed, one of them has been promoted.

7.2 In a submission dated 4 February 2015, the complainant argues that the State party provided incorrect information in its submission. He states that ever since the 26 August 2009 verdict was issued against him by Pyatigorsk City Court, he has been asking for copies of the relevant documents, but the Court continues to refuse to provide them. He maintains that that constitutes a violation of article 24.2 of the Constitution of the Russian Federation. He maintains that the Supreme Court has established that Pyatigorsk City Court committed procedural violations and that his verdict should be revoked on that basis. He reiterates that he was convicted based on a confession extracted by torture and that the courts ignored his complaints in that regard. He claims that the verification conducted by the Pyatigorsk Prosecutor's office on 27 and 29 November 2012 established that torture had been used, which should have been considered a newly discovered fact and should have served as a basis to reopen the case. He submits that on 16 September 2013, the Prosecutor of the Stavropol Region forwarded his complaint to the Pyatigorsk Prosecutor's office with instructions to conduct additional investigations, but the Pyatigorsk Prosecutor failed to do so. In addition, he argues that his verdict should have been reviewed after amendments were introduced in the Criminal Code of the Russian Federation.

7.3 In a submission dated 16 March 2015, the complainant submits that the individuals who subjected him to torture have not been punished, and reiterates his submission of 4 February 2015. He requests the United Nations High Commissioner for Human Rights to ask for the reopening of his criminal case and review of the verdict.

7.4 In a submission dated 23 March 2015, the complainant submits that one of the officers who tortured him has been promoted to head of the police department. Meanwhile, the complainant is still suffering from the consequences of the torture inflicted by that officer. He reiterates that he has a hearing loss, that his rib was broken and that as a result

of electric shocks, he has "heart ache". He reiterates some of his previous submissions. He states that he asked to be assessed by a medical commission and declared incapacitated; in 2013, he was examined by a prison doctor, who declared that his hearing loss was the result of an ear infection. He maintains that that conclusion was illegal and was made in order to cover up the crimes of the police officers. He asks the Committee to request his complete medical file from the State party and maintains that he is unlawfully deprived of disability certification.

7.5 In a submission dated 24 August 2015, the complainant reiterates some of his previous submissions.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee recalls that, under article 22 (5) (a) of the Convention, it shall not consider any communications from an individual unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. The Committee recalls its jurisprudence that examinations by the European Court of Human Rights constitute such a procedure.[1]

8.2 The Committee considers that a communication has been or is being examined by another procedure of international investigation or settlement if the examination by the procedure relates or related to the same matter within the meaning of article 22 (5) (a), which must be understood as relating to the same parties, the same facts and the same substantive rights. The Committee observes that on 18 April 2013, the complainant submitted an application to the European Court of Human Rights against the Russian Federation, which was registered under No. 33772/13, and which, according to information received in November 2015, is still pending before the Court. The Committee notes that the complainant did not submit his communication to it until 13 May 2013. The Committee also notes that according to the complainant's submission (see para. 7.1 above), he wanted the European Court to review the matter of violation of his rights in relation to torture and that in his complaint to the Committee, he made reference to articles 3, 6, 13 and 34 of the European Convention on Human Rights. Accordingly, the Committee concludes that the application to the European Court is based on the same facts, and relates, at least in part, to the same substantive rights as those invoked in the present communication. Having concluded that the same matter is being examined before the European Court, the Committee considers that the requirements of article 22 (5) (a) have not been met in the present case and that the complaint is thus inadmissible.[2]

8.3 The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (5) (a) of the Convention;

(b) That the present decision shall be communicated to the complainant and to the State party.

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[1] See, for example, communication No. 247/2004, *A.A. v. Azerbaijan*, decision adopted on 25 November 2005, para. 6.7

[2] See, for example, communications No. 305/2006, *A.R.A. v. Sweden*, decision adopted on 30 April 2007, para. 6.2; No. 247/2004, *A.A. v. Azerbaijan*, para. 6.8; No. 140/1999, *A.G. v. Sweden*, decision adopted on 2 May 2000, para. 6.2.

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 578/2013

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by:	E.N., represented by Track Impunity Always (TRIAL)
Alleged victim:	The complainant
State party:	Burundi
Date of complaint:	10 December 2013 (initial submission)
Date of present decision:	25 November 2015
Subject matter:	Torture committed by police officers
Procedural issue:	None
Substantive issues:	Torture and cruel, inhuman or degrading treatment or punishment; obligation to systematically monitor interrogation techniques and practices; obligation of the State party to ensure that the competent authorities conduct a prompt and impartial investigation; right to lodge a complaint; right to redress
Articles of the Convention:	Articles 2 (1), 11, 12, 13 and 14, read in conjunction with articles 1 and 16 of the Convention

[Annex]

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 578/2013*

Submitted by:	E.N., represented by Track !mpunity Always (TRIAL)
Alleged victim:	The complainant
State party:	Burundi
Date of complaint:	10 December 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 25 November 2015,

Having concluded its consideration of communication No. 578/2013, submitted to the Committee on behalf of E.N. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is E.N., born in 1964 in Mwaro Province, Burundi, and residing in the city of Bujumbura. He claims to have been a victim of violations of articles 2 (1), 11, 12, 13 and 14, read in conjunction with article 1 and, alternatively, article 16 of the Convention. The complainant is represented by counsel.

1.2 On 19 December 2013, in accordance with article 114 (1) of its rules of procedure, the Committee requested the State party to adopt effective measures, throughout the duration of the Committee's consideration of the complaint, to prevent any threats or acts of violence to which the complainant or his family might be exposed, in particular as a result of having lodged the present complaint.

The facts as submitted by the complainant

2.1 The complainant was working as a bus driver in the city of Bujumbura when the events in question took place. On 15 May 2012 at around 10.40 a.m., he had just reached the centre of Bujumbura and had let off all his passengers. As the passengers were disembarking, the driver found that he was unable to provide the change due to two customers for the purchase of their tickets. He therefore left the vehicle, together with the two customers, to go find change. He drove to the bus depot and, around 15

* The following members of the Committee participated in the consideration of the present complaint: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

minutes later, parked his vehicle to await new passengers.

2.2 Suddenly, a uniformed police officer, identified as Noël Ndayisaba, accompanied by four other uniformed police officers armed with rifles and holding belts in their hands, approached him and seized him sharply by the neck while he was still at the wheel of his bus. The officers ordered the complainant to get out of his vehicle.

2.3 The police officers then started kicking the complainant and lashing him with the belts while he was still in the parking lot. They indicated that they were punishing him for, according to them, having failed to return 700 Burundi francs (around US$ 0.45) in change to one of his customers. The complainant was then taken by force to the police station located next to the Bujumbura Market Management Company (SOGEMAC), which is adjacent to the site of the former Bujumbura central market and around 25 metres from the bus parking lot. Co-workers of the complainant who had witnessed the beating attempted to follow the police officers to the station, but they were refused entry. These co-workers then alerted the Radio Publique Africaine (RPA) radio station, which then reported on the incident in its broadcast.

2.4 Upon his arrival at the police station, the complainant was ordered to lie down on the floor and was stripped to the waist. For more than two hours, he was beaten, pulled around the room, kicked by the police officers and lashed with their belts. The beating was so severe that he lost consciousness for an undetermined length of time. He was then left lying on the floor, without assistance. It was not until the superintendent in charge of the police station located next to SOGEMAC came to question his subordinates about what was happening that the abuse stopped. However, the complainant received neither help nor medical attention, even though he was clearly in need of both, given his condition. Because his telephone had been confiscated by the police officers, the complainant was unable to call for assistance himself. In the meantime, witnesses to the attack had managed to contact a friend of the complainant, who had informed the family of what had occurred. The friend in question also managed to gain access to the victim, whom he found sweating and in agony, his naked, swollen body covered in bruises. The friend immediately demanded that the victim be taken to hospital.

2.5 Nearly two hours after the incident, the complainant was taken to the emergency room at Prince Regent Charles Hospital in Bujumbura. In response to a request for an expert opinion, a government doctor performed an examination the day after the incident and issued a medical certificate dated 16 May 2012. The certificate details the medical consequences of the beating and of his injuries.[1]

2.6 Although the complainant received the emergency medical care called for by his condition, he continues to suffer acute pain and limited mobility of his right arm. He also suffers from post-traumatic stress and severe anxiety and feels extremely guilty about no longer being able to provide for the needs of his family, particularly those of his four young children. His economic situation is very precarious; because of the physical repercussions of the beating, he is no longer in possession of his former job skills or able to do his job as a bus driver, which is a very physically demanding occupation. While he previously earned a monthly salary of 250,000 Burundi francs (around US$ 160), he no longer has any source of income and is unable to provide for his family's most basic needs.

2.7 The day after the incident, an investigation was begun into the acts of torture to which the complainant had been subjected. On 16 May 2012, an officer of the criminal investigation police requested an expert opinion, and a medical certificate signed by a

[1] The consequences noted on the certificate included back pain and pain in his right arm caused by the kicks he had received and the partial loss of the use of his right arm.

government doctor (para. 2.5) was issued accordingly. However, the investigation focused on a single police officer, who claimed not to know the other officers' names.

2.8 Since no follow-up action was taken in respect of the medical report and since the investigation was conducted in a manner that was neither effective nor impartial, on 20 September 2012, the complainant contacted the Prosecutor General of the Bujumbura court of appeal to report the acts of torture to which he had been subjected. He recounted in his letter that only one person had been investigated, even though five police officers were implicated in his accusations of torture.

2.9 The complainant emphasizes that the case was covered extensively by the local media, in particular the RPA radio station, which has a large audience and had reported the incident immediately after it occurred, so neither the administrative nor the governmental authorities could be unaware of the events in question.

2.10 On 13 December 2012, the Office of the Public Prosecutor for the Bujumbura court of appeal concluded its investigation of the case and referred it to the local court (*tribunal de résidence*) of Rohero as Case No. RP 17/2013. The investigating judge noted in the case file that the treatment inflicted upon the complainant had caused "injuries". The complainant maintains that the investigation focused on just one of the police officers involved, namely Noël Ndayisaba. Although, in the complaint submitted on 20 September 2012, he had stated that the investigation should be expanded to include the other officers involved, that request had not been acted upon. Apparently, the names of the other four police officers were not disclosed by their superior officer. Since the fact that this information was withheld prevented the judicial authorities from establishing the facts of the case, they should have taken action to ascertain the identities of the other officers. In addition, a number of different sources indicated that all the police officers then based at the station near the SOGEMAC building had since been transferred to other stations.

2.11 The complainant also notes that the police officer was charged with assault, not torture. Given that the investigation was neither complete nor impartial and resulted in an erroneous classification of the acts in question, the victim visited the investigating judge on numerous occasions in an effort to make the judge aware of the limitations of the investigation and ensure that it was resumed and conducted in a thorough and comprehensive manner. As these efforts proved fruitless, on 3 February 2013 the complainant again petitioned the Prosecutor General of the Bujumbura court of appeal to ensure that a thorough, effective and comprehensive investigation would finally be undertaken that would result in the initiation of proceedings against all the alleged perpetrators of the torture inflicted upon him. However, his petitions were not acted upon. Despite the gravity of what occurred, the alleged perpetrators have still not been prosecuted or punished, and the victim has not received any compensation.

2.12 The complainant refers to the various steps that he has taken. He notes that he has endeavoured to exhaust all domestic remedies but that his efforts have been fruitless. He further states that the application of the remedies that he has pursued has been unreasonably prolonged. In addition, he states that it is particularly dangerous for victims of torture to attempt to bring those responsible to justice. The climate of impunity which prevails in Burundi serves only to heighten the danger that he faces. The complainant therefore asks the Committee to waive the requirement regarding the exhaustion of domestic remedies and find the communication admissible.

The complaint

3.1 The complainant claims to be a victim of violations by the State party of articles 2 (1), 11, 12, 13 and 14, read in conjunction with article 1, and, alternatively, with article 16 of the Convention.

3.2 According to the complainant, the abuse inflicted upon him over a period of more than two hours, during which he was lashed with belts and kicked by officers of the Burundian National Police Force, undeniably constitutes acts of torture[2] as defined in article 1 of the Convention. There is no doubt about the fact that these grave acts, which have been verified medically, were perpetrated intentionally by agents of the State party.

3.3 The complainant invokes article 2 (1) of the Convention, pursuant to which the State party should have taken effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. In the present case, no investigation has been carried out despite the existence of an expert medical report. Furthermore, the inquiries that were made focused on only one suspect, were based on an incorrect legal classification of the acts in question and did not ascertain the part played by the other police officers. The complainant adds that his case is not an isolated one and that serious human rights violations committed by police officers in Burundi largely go unpunished. Since it has not taken the legislative and other measures necessary to prevent the practice of torture, the State party has, according to the complainant, failed to fulfil its obligations under article 2 (1) of the Convention.

3.4 The complainant also invokes article 11 of the Convention and notes that the State party failed to meet its obligations in relation to the custody and treatment of persons subjected to any form of arrest, detention or imprisonment. His detention was unlawful: he was not formally arrested but was simply placed in police custody in the police station next to SOGEMAC and was not informed of the charges against him. Additionally, given the critical condition in which he was left following his interrogation, it is clear that the Burundian authorities failed to properly supervise how he was treated while in police custody. He was not taken to hospital to receive the urgent medical attention he required until two hours after he had been left lying on the floor, and even then only thanks to a friend who had intervened on his behalf and urged the officer in charge of the station to take action. The complainant adds that there is no effective, independent mechanism for monitoring places of detention in Burundi and concludes that the State party failed in its duty to properly supervise the way in which he was treated while being held at the police station.[3]

3.5 The complainant also maintains that the State party has violated article 12 of the Convention in the present case. Under this article, the competent authorities are required to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.[4] He recalls that it is not necessary, for the purposes of article 12, for a formal complaint to have been lodged. He also recalls that, in the case in question, the Burundian authorities knew that acts of torture had been committed because an expert opinion had been requested by an officer of the criminal investigation police the day after the incident, i.e., on 16 May 2012. However, no effective, thorough and impartial investigation was undertaken. The investigation that was carried out was incomplete and was not of a nature that would have allowed the facts of the case and, consequently, the responsibility of those involved, to be established. The fact that the investigation was

[2] The complainant refers to communication No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 24 November 2004, para. 5.3.

[3] The complainant recalls that, in its concluding observations on the State party's initial report, the Committee expressed concern at the lack of systematic and effective monitoring of all places of detention, notably through regular unannounced visits by national inspectors and a mechanism for legislative and judicial monitoring (CAT/C/BDI/CO/1, para. 19).

[4] The complainant refers to communications No. 341/2008, *Salhi v. Algeria*, decision adopted on 3 June 2011, para. 9.6; No. 187/2001, *Thabti v. Tunisia*, decision adopted on 14 November 2003, para. 10.4; No. 60/1996, *M'Barek v. Tunisia*, decision adopted on 10 November 1999, para. 11.7; and No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.2.

not impartial is also attested to by the authorities' failure to take action against the police officers involved. Indeed, it belies a desire to protect the perpetrators of torture in a case that was quite straightforward, since identifying the persons involved would not have been difficult to do and there were witnesses present at the scene. The decision to classify the acts in question as assault, even though the complainant was severely beaten, lost consciousness and suffered a debilitating fracture of his arm, as well as various other injuries, further confirms the inefficacy and lack of impartiality of the investigation. Consequently, the State party has acted without regard for its obligations under article 12 of the Convention.

3.6 With respect to article 13 of the Convention, the complainant maintains that the State party was under an obligation to ensure that he had the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. However, in spite of the complainant's efforts, and even though an investigation was begun and, on 13 December 2012, the prosecution service asked the Rohero local court to set a date for the hearing, the case has yet to be heard by the Rohero court, and the judicial authorities have taken no action against the only police officer to have been investigated. The complainant therefore concludes that the State party should be found to be in violation of article 13 of the Convention.

3.7 The complainant also invokes article 14 of the Convention. He states that, by depriving him of due process, the State party has also deprived him, as a victim of torture, of an enforceable right to compensation. Furthermore, given the inaction of the judicial authorities, other remedies to obtain redress, such as, for example, a civil suit for damages, have no realistic prospect of success. The Burundian authorities have taken very few steps to compensate victims of torture, a point raised by the Committee in its concluding observations concerning the State party's initial report in 2006 (CAT/C/BDI/CO/1, para. 23). The complainant adds that he has not received any type of rehabilitation assistance to help him to recover as fully as possible in physical, mental, social and financial terms. He can no longer work as a bus driver because of the physical consequences of his injuries, and he has found it very difficult to reintegrate himself into his professional and social life. The fact that the crimes committed against him remain unpunished, that his torturers have been neither convicted nor prosecuted and that they have not been subject to any investigation or to any other sort of action against them demonstrates that there has been a violation of his right to redress under article 14 of the Convention.

3.8 The complainant reiterates that the violence inflicted upon him constitutes torture as defined in article 1 of the Convention. However, in the alternative, even if the Committee were to decide not to characterize it as such, the abuse suffered by the victim in any case constitutes cruel, inhuman or degrading treatment, and the State party is obligated, under article 16 of the Convention, to prevent public officials from committing, instigating or tolerating such acts and for punishing them if they do so.

State party's observations on admissibility and merits

4.1 On 28 April 2014, the State party submitted its observations on the admissibility and merits of the communication. At the outset, the State party notes that the complainant has not exhausted the available domestic remedies, as required under article 22 (5) (b) of the Convention. Less than 24 hours after the investigation into the incident had been opened, the police officer in charge of the case requested an expert opinion, and a medical certificate was drawn up and issued by a government doctor. After gathering the evidence required to establish the truth, the police officer submitted the case file to the prosecutor's office, which in turn opened Case No. RMPG 604/NE, which it forwarded to the presiding judge of the local court of Rohero

on 13 December 2012 so that it could set a date for a hearing. The Burundian authorities have therefore exercised all due diligence in this case.

4.2 According to the State party, proceedings could have taken place fairly swiftly if the victim's lawyer had not entered into interminable debates with the prosecutor's office regarding the prosecution of four other police officers even though, as a result of its investigation, the prosecutor's office had concluded that charges should be brought against one suspect only. Therefore, in attempting to dictate the direction to be taken by the prosecutor's investigation, the complainant's lawyer contributed to the procedural delays. If he believed that there were irregularities in the case because the investigation had not been impartial or had been incomplete, the lawyer could have referred the matter to the State Prosecutor (who is the immediate superior of the Prosecutor General of the Bujumbura court of appeal) or the Minister of Justice, who is empowered by law to instruct the prosecutor's office to investigate a given individual. The complainant's lawyer, who was aware of the available remedies, could also have waited until the public hearing took place to raise the issue of such irregularities.

4.3 The State party also notes that the complainant visited the office of the presiding judge of the Rohero local court in person and informed the judge that he would return with a written notice of his intention to file a criminal indemnity suit to claim redress in the form of compensation. However, the presiding judge has been awaiting his return ever since that date. The case has been left pending the establishment of a date for the public hearing, but it has been assumed that the individual concerned is no longer interested in pursuing the matter. Were it not for these obstructions, it is likely that a court decision would have been handed down in this case by now.

4.4 The State party further points out that, contrary to the complainant's claims, the acts in question cannot be classified as acts of torture pursuant to the definition of torture contained in the Criminal Code of Burundi, which stipulates that such acts must be committed with the aim of obtaining information or a confession. Even though the Burundi prosecutor's office has taken note of the reprehensible acts committed against the complainant by police officers, those officers were not acting on an order from their superiors, and they had no authority to forcibly recover any debts which the bus driver might owe to customers. Consequently, if a customer did happen to have asked a police officer to intervene, and the officer agreed to the request, it had been done on the spur of the moment and out of ignorance of the law. The Committee should not therefore take the view that the police officer was acting on any sort of order from his superiors; the incident was an unfortunate chance occurrence that was unpremeditated and unplanned. Furthermore, the persons accused by the complainant are low-ranking police officers who, contrary to the complainant's allegations, have neither the authority nor the influence to prevent judicial proceedings from being initiated in response to his complaint. Furthermore, it should be noted that the offence of assault can carry a custodial sentence of up to 20 years, depending on its seriousness.

4.5 With regard to the complainant's claims for compensation, the State party maintains that it is up to the Burundian court that tries the case to determine what damages are due if it finds that the offence of assault was indeed committed. The Burundian courts regularly hand down decisions in which they award compensation to victims.

4.6 As for the protection measures that have been requested, the State party notes that the complainant, who is currently living in Burundi, has not received any threats and has never had any cause to be concerned for his safety. The interim measures requested by the Committee are therefore inappropriate and unnecessary.

4.7 For all the above reasons, the State party invites the Committee to conclude that the communication is inadmissible by reason of the failure to exhaust domestic remedies and that appropriate and effective measures were adopted without delay by the authorities of Burundi in response to the incident. It also invites the Committee to reject the complainant's claim for redress, including compensation, and to refer him to the domestic court assigned to the case, which will consider his claim for damages and pass judgement on the matter.

Complainant's observations on admissibility and merits

5.1 On 1 September 2014, the complainant submitted his comments on the State party's observations. He recalls that he continues to suffer the consequences of the torture to which he was subjected and has not been provided with any rehabilitation measures, while the perpetrators of the offences committed against him go unpunished.

5.2 The fact that the complainant has submitted a complaint to the Committee does not mean that he has withdrawn the complaint lodged with the Burundian judicial authorities. The complainant rejects the State party's argument that he failed to pursue the matter with the national authorities.

5.3 Although the State party believes that protection measures are unnecessary and inappropriate, it has not provided any evidence to reassure the complainant as to his safety. Furthermore, the situation in the country has grown considerably worse, with those in power adopting a harsher attitude towards persons who voice opinions that are contrary to those of the current regime. Accordingly, the complainant's fears are entirely justified, especially since Burundi has yet to adopt legislation on victim and witness protection and therefore lacks a structural legislative framework for addressing such matters.

5.4 As to the argument that the complainant should have availed himself of domestic remedies and that those remedies have been shown to be reliable, given the diligence with which the authorities responded to the incident, the complainant recalls that, although an investigation was initiated the day after the event in question, it was not conducted in a diligent or impartial manner and was impeded in various ways. The remedies should be considered unsatisfactory owing to the irregularities in the investigation and the unreasonable delays in pursuing the case. With reference to the Committee's jurisprudence,[5] the complainant recalls that, whenever there is reasonable ground to believe that acts of torture have been committed, the State must automatically initiate an investigation, regardless of the grounds for the suspicion. The complainant cannot be held responsible for delaying the proceedings, since the decision to conclude the discussions lay with the judicial authorities and, specifically, the prosecutor. This observation also holds true for action to follow up on the case; the State bears primary responsibility for conducting a thorough examination of the complainant's case once the incident has been reported. Moreover, in view of the unreasonable delays in the proceedings, the complainant must not be expected to wait until the public hearing — a date for which has still not been set — to report the irregularities that occurred in the investigation. That would be tantamount to penalizing the complainant for the authorities' lack of diligence in examining the case.

5.5 In addition, and referring again to the Committee's jurisprudence, [6] the complainant maintains that the application of domestic remedies has proved to be

[5] See, inter alia, Committee against Torture, *Hanafi v. Algeria*, para 9.6; *Thabti v. Tunisia*, para. 10.4; *M'Barek v. Tunisia*, para. 11.7; and *Blanco Abad v. Spain*, para. 8.2.

[6] The complainant recalls that, in the case of *Sonko v. Spain* (communication No. 368/2008, decision adopted on 25 November 2011), the Committee was of the view that an enquiry that had been under way for a little more than 19 months, without a prompt and impartial investigation having been

unreasonably prolonged, given that an effective investigation into the incident that occurred in May 2012 has still not been carried out. As for the assertion that the complainant is responsible for the delays because of his lawyer's discussions with the judge, the complainant contends that his lawyer's actions fell within the normal exercise of the prerogatives of an attorney who is seeking to ensure the proper administration of justice in the face of the shortcomings found to exist in the investigation and proceedings. The State party's assertion is also contradictory in that while, on the one hand, it criticizes the complainant for failing to have recourse to domestic remedies, it also, on the other hand, criticizes him for having delayed the proceedings precisely by attempting to make use of those remedies.

5.6 With regard to the State party's additional argument that the complainant was intending to sue for damages through a criminal indemnity action in the Rohero court but ultimately desisted, the complainant maintains that the initiation of proceedings is not dependent on whether or not the victim decides to sue for damages and that, for offences as serious as those involved in the present case, a criminal indemnity action could not in any way compensate for the failure to prosecute the case, which should have been done on an ex officio basis.

5.7 As regards the classification of the offence, the complainant notes that the State party has acknowledged that the acts in question have caused him acute pain and suffering. Furthermore, it has not denied that agents of the State party were involved. The complainant rejects the State party's argument that the acts were not committed pursuant to instructions or with intention or premeditation. The end pursued, as the State party has acknowledged, was to punish a person thought to have stolen money from a bus passenger. Punishment is one of the unlawful grounds expressly specified in the definition of torture, and such punishment does not have to have been inflicted for purposes of obtaining information. There is no doubt that the complainant was under the physical control of agents of the State party; he was totally overpowered by the police officers and mounted no resistance. It cannot therefore be argued that the violence inflicted upon the victim was necessary for his arrest or had any legitimate purpose. Furthermore, whether or not the police officers had received an order from their superiors is irrelevant. Article 2 (2) of the Convention does not admit any exceptional circumstance that might be invoked as a justification for torture.

5.8 As to the substance of the complaint and the alleged violations of articles 1, 2, 11, 12, 13, 14 and 16, the complainant reiterates all the arguments set forth in the initial submission.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 As required under article 22 (5) (a) of the Convention, the Committee has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

6.2 The Committee notes that the State party has contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies, inasmuch as a formal criminal charge of assault was filed and registered with the Rohero local court as Case No. RMPG 604/NE on 13 December 2012. The Committee notes that the State party has indicated that proceedings are ongoing, but it has provided no further

undertaken, was not in keeping with the State party's obligations in the matter, particularly those set forth in article 12 of the Convention. He also recalls that, in the case of *Blanco Abad v. Spain*, the Committee concluded that taking 10 months to carry out investigative procedures "shows the investigative measures not to have satisfied the requirement for promptness in examining complaints".

information or evidence that might allow the Committee to ascertain what progress has been made or to judge how effective the proceedings might be, bearing in mind that the case has remained on the court's docket for nearly three years. The Committee finds that, under the circumstances, the inaction of the competent authorities has made it unlikely that any remedy that might provide effective relief can be initiated and that, in any event, the domestic proceedings have been unreasonably prolonged. Accordingly, the Committee considers that it is not precluded from considering the complaint under article 22 (5) (b) of the Convention.

6.3 In the absence of any impediment to admissibility, the Committee proceeds to its consideration of the merits of the claims submitted by the complainant under articles 1, 2 (1), 11, 12, 13, 14 and 16 of the Convention.

Consideration of the merits

7.1 The Committee has considered the complaint in the light of all the information made available to it by the parties in accordance with article 22 (4) of the Convention.

7.2 The Committee notes that, according to the complainant, on 15 May 2012 he was violently assaulted by uniformed police officers armed with rifles and was then arrested and taken to the police station located next to the SOGEMAC building without being informed of the reasons for his arrest. Upon his arrival at the police station, he was kicked and beaten with belts so violently for more than two hours that he lost consciousness. The complainant was left lying on the floor without assistance, despite his serious injuries, and was only taken to hospital, two hours after the incident, thanks to the intervention of a friend. The Committee observes that the treatment inflicted on the complainant was intentional, since it occurred while he was in the hands of agents of the State party, and was of such a severity that the victim lost consciousness and that his injuries have had lasting consequences which affect him to this day. Furthermore, the abuse to which he was subjected was in all likelihood intended to punish him for an act that he was thought to have committed.

7.3 The Committee has noted the State party's argument that the actions of the police officers were unplanned, that the officers were not acting on orders and that therefore the acts in question cannot be classified as torture. In this regard, the Committee observes that, according to information provided by the complainant that has not been contested by the State party, the individuals who beat and interrogated him were uniformed police officers armed with rifles and belts. Furthermore, the complainant was severely beaten for two hours by police officers within the police station itself. Based on the information provided to it, the Committee concludes that the abuse inflicted upon the complainant was committed by agents of the State party acting in an official capacity and that the acts constitute acts of torture within the meaning of article 1 of the Convention.

7.4 Having found a violation of article 1 of the Convention, the Committee will not consider the grievances raised by the complainant, on a subsidiary basis, under article 16 of the Convention.

7.5 The complainant also invokes article 2 (1) of the Convention, under which the State party is required to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. The Committee observes that the complainant in this case was severely beaten and then detained without being allowed immediate contact with his family or access to legal or medical assistance. Even though the authorities have been provided with ample information about the acts committed against the victim, an investigation was promptly launched the day after the events, that is, on 16 May 2012, and the case file was submitted to the Rohero local court on 13 December 2012, the acts in question

remain unpunished. Accordingly, the Committee finds a violation of article 2 (1), read in conjunction with article 1 of the Convention.[7]

7.6 The Committee also notes the complainant's argument that article 11 was violated because the State party failed to properly oversee the treatment he received while in detention. In particular, he claims that he was not formally arrested but rather placed in police custody; that he was not informed of the charges against him; that his detention was unlawful; and that he was not examined promptly by a doctor, despite his critical condition. The Committee recalls its concluding observations regarding the second periodic report of Burundi, in which it expressed concern at: the excessive length of time during which people can be held in police custody; numerous instances in which the allowable duration of police custody has been exceeded; failures to keep registers on persons in custody or failures to ensure that such records are complete; failures to comply with fundamental legal safeguards for persons deprived of their liberty; the absence of provisions that guarantee access to a doctor and access to legal assistance for persons of limited means; and the excessive use of pretrial detention in the absence of regular reviews of its legality and of any limit on its total duration (see CAT/C/BDI/CO/2, para. 10). The Committee observes that the complainant appears to have been deprived of any form of judicial oversight. In the absence of any evidence from the State party that it did supervise the complainant's detention, the Committee finds that the State party has violated article 11 of the Convention.

7.7 With regard to articles 12 and 13 of the Convention, the Committee has noted that an investigation into the facts of the case was initiated promptly the day after the events in question. The Committee also notes the complainant's allegations that the investigation was vitiated by a number of shortcomings, including the legal classification of the acts concerned; the fact that only one of the five police officers under suspicion was investigated; the fact that, even though the case was referred to the Rohero local court on 13 December 2012, the case has not yet been heard; and the fact that, almost three years after the proceedings were initiated, the judicial authorities have taken no action against the only police officer to have been investigated. The State party contests the referral of the case to the Committee by the complainant on the grounds that the latter has filed a complaint with the domestic authorities, but it has provided no evidence which might help the Committee to ascertain what progress has been made, to judge how effective the procedure might be or to explain the reasons for such a delay. The Committee considers that such a long delay is clearly in breach of the State party's obligations under article 12 of the Convention, which requires it to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. By failing to meet this obligation, the State party has also failed to fulfil its responsibility under article 13 of the Convention to guarantee the complainant's right to lodge a complaint, which presupposes that the authorities provide a proper response to such a complaint by launching a prompt and impartial investigation.[8]

7.8 With regard to article 14 of the Convention, the Committee has taken note of the complainant's claim that he has not been provided with any type of rehabilitation measure designed to ensure that he recovers as fully as possible in physical, psychological, social and financial terms. The Committee recalls that article 14 not only recognizes the right to fair and adequate compensation but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee recalls its general comment No. 3 (2012) on the implementation of article 14 by States parties, in which it establishes that States parties shall ensure that victims of torture or

[7] See, inter alia, communication No. 522/2012, *Gahungu v. Burundi*, decision adopted on 10 August 2015, para. 7.6.

[8] See *Gahungu v. Burundi*, para. 7.8.

ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible.[9] Such redress should cover all the harm suffered by the victim and encompass, among other measures, restitution, compensation and guarantees of non-repetition of the violations, taking into account the circumstances of the individual case.[10] In view of the failure to conduct an effective and impartial investigation in this case, the Committee concludes that the State party has failed to fulfil its obligations under article 14 of the Convention.

8. The Committee, acting under article 22 (7) of the Convention, is of the view that the facts before it disclose a violation of article 1, article 2 (1), read in conjunction with article 1, and articles 12, 13 and 14 of the Convention.

9. Pursuant to rule 118 (5) of its rules of procedure, the Committee urges the State party to: (a) complete its investigation into the events in question with a view to bringing all those responsible for the complainant's treatment to justice; (b) grant the complainant appropriate redress, including compensation for the material and psychological harm suffered, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition; (c) take all necessary measures to prevent any threats or acts of violence to which the complainant or his family might be exposed, in particular as a result of having lodged the present complaint; and (d) inform the Committee, within 90 days from the date of the transmittal of this decision, of the steps it has taken, including the provision of compensation to the complainant, in response to the views expressed above.

[9] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 44* (A/68/44), annex X, para. 5.

[10] See *Bendib v. Algeria*, para. 6.7.